

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GWENDOLYN CHANDLER
Claimant

VS.

STATE OF KANSAS
Self-Insured
Respondent

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Docket No. 205,255

ORDER

Claimant requests review of the preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer dated February 23, 1996.

ISSUES

The Administrative Law Judge denied claimant's request for benefits and found that claimant's accidental injury did not arise out of and in the course of employment with the respondent, that notice was not given within ten days, and that just cause for failure to give notice within ten days was not shown. Claimant asks the Appeals Board to review those findings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds:

The preliminary hearing Order of the Administrative Law Judge should be affirmed.

Claimant, a licensed mental health technician, worked for the respondent for 23 years. On or about July 12, 1995, claimant allegedly experienced pain in her right arm, chest, and neck while hanging up her book bag which was filled with personal reading materials. The incident occurred shortly after claimant had checked in for work. Claimant testified that it was common practice for her to read during her breaks and the reading materials were brought for that purpose. Claimant also testified that on the day of the incident she told her immediate supervisor, Linda Gayton, about the pain she was experiencing and that she intended to prepare an incident report. On direct examination, claimant testified she asked another supervisor if she could prepare an incident report and that the supervisor, Janet Weller, told claimant that she needed to contact others for permission. According to claimant, because the head of personnel, Diane Waggoner, was absent from work that day, the incident report was not prepared. However, on cross-examination, claimant testified to a slightly different version of the facts. On cross-examination claimant stated that Janet Weller told her to go to Employee Health Services to prepare an accident report but she was unable to prepare the report because Ms. Waggoner was on vacation.

On July 13, 1995, claimant sought treatment at the Stormont-Vail Hospital emergency room. Claimant continued to work until September 1, 1995 when Dr. Richard D. Iliff took her off work. At some point in time, claimant allegedly returned to Janet Weller to again ask about preparing an incident report and was told it was too late. Claimant testified she did not see any signs posted regarding her workers compensation rights and did not remember participating in any classes or briefings where supervisors spoke about work-related injuries.

Claimant introduced into evidence the Stormont-Vail emergency room records. The Emergency Nursing Assessment Record indicates claimant was complaining of right anterior chest pain which she had experienced for two days. The document also indicates that claimant had an onset of right arm symptoms the day before at work but there was no history of trauma. Nothing is mentioned in this document about claimant hurting her arm or neck while lifting a book bag. Another document from the emergency room also indicates claimant was seeking treatment for chest pain she had experienced the day before. Medical records from her personal physician, Dr. Iliff, dated August 27, 1995 and Med-Assist, a minor emergency facility, dated August 6, 1995, were also introduced into evidence. Neither Dr. Iliff's or Med-Assist's records indicate claimant gave a history of injury by lifting her book bag.

Respondent presented the deposition testimony of Linda Gayton, Diane Waggoner and Janet Weller. Ms. Gayton testified she did not recall claimant telling her that she had hurt herself hanging up her belongings. However, Ms. Gayton did testify that claimant had told her she was not certain how she hurt her neck and back and gave a history that a few days before claimant heard something pop when she was working with somebody on the Medical Unit and that she might have hurt herself at that time. Ms. Gayton told claimant to go to Personnel Health for an examination because there was something visibly wrong with claimant. Although she was not claimant's supervisor, Ms. Gayton testified that she was the proper person to whom claimant should have reported an accident on July 12, 1995. She also testified that although Diane Waggoner was the head of Personnel Health, there should have been two other individuals who worked in that office in July 1995 who could have taken claimant's incident report.

Diane Waggoner testified that she was the Personnel Health nurse. When she is not available to take an incident report, others in her office are available. Also, the nurses in the Medical Unit can prepare incident reports. Ms. Waggoner testified that she was not on vacation but at work on July 12, 13, and 14, 1995 and that she does not recall receiving any information from claimant in that time frame regarding an injury. She first learned that claimant was claiming an injury in early September 1995.

Janet Weller testified that she is a registered nurse and supervisor of a Medical Unit. She does not recall claimant reporting an injury to her on July 12, 1995 and believes it was late August before claimant first spoke to her about a work-related incident. According to Ms. Weller, it was late August that she advised claimant to speak to Personnel Health about preparing an incident report and it was at that time that Diane Waggoner was on vacation.

Based upon the evidence presented, for purposes of preliminary hearing, the Appeals Board finds claimant has failed to prove both that she sustained personal injury by accident arising out of and in the course of her employment with the respondent and that she gave timely notice of that alleged accident as required by K.S.A. 44-520. Claimant's version of the facts surrounding her alleged accident is not supported by those whom she identified as receiving notice of the alleged incident or having other pertinent knowledge concerning this claim. In fact, the others who testified in this proceeding contradict claimant's testimony to the extent that questions arise concerning the accuracy of claimant's memory. Because of the above findings, the issue whether an injury caused by lifting a book bag containing only personal belongings arises out of and in the course of employment is rendered moot.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Floyd V. Palmer dated February 23, 1996 should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1996.

BOARD MEMBER _____

BOARD MEMBER _____

BOARD MEMBER _____

c: Roger D. Fincher, Topeka, KS
Kathryn Myers, Topeka, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director